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SUBJECT: FURTHER INFORMATION ON AUSTRALIA'S ACCESSION TO
THE TREATY OF AMITY AND COOPERATION

REF: A. A. STATE 20228

[1](#)B. B. CANBERRA 00239

Classified By: Political Counselor James F. Cole for reasons: 1.4 (b)
and (d)

[1](#)1. (SBU) Summary: The Australian director of ASEAN relations at the Department of Foreign Affairs and Trade (DFAT) presented the USG with further information and materials on the Australian process of accession to the Treaty of Amity and Cooperation in Southeast Asia (TAC) in 2005. These included an Australian description of the accession process, three on-line references, and a verbal recounting of the differing methods of conveying understandings to ASEAN. End summary.

[1](#)2. (SBU) Following is DFAT's description of the GOA's accession process to the TAC:

--Australia acceded to the Treaty of Amity and Cooperation (TAC) on 10 December 2005, and it immediately entered into force. The TAC was tabled in conjunction with a National Interest Analysis (see website in para 3 below) in the House of Representatives and the Senate on 9 August 2005. It was considered by the Joint Standing Committee on Treaties (JSCOT) on 9 August 2005. The US State Department already has a copy of the JSCOT Report (Report 68, 2005).

Australian domestic treaties process

--The power to enter into treaties is an executive power within Section 61 of the Australian Constitution and accordingly, is the formal responsibility of the Executive rather than the Parliament. However, all treaties (except those the Government decides are urgent or sensitive) are tabled in both Houses of Parliament for at least 15 sitting days prior to binding treaty action being taken. Treaties are tabled in the Parliament with a National Interest Analysis which notes the reasons why Australia should become a party to the treaty. The JSCOT considers tabled treaties.

Concerns about accession

- Possible inconsistency with existing alliance obligations, in particular ANZUS.
- The emphasis in the treaty on the principle of non-interference. There was a possibility that this could reduce our ability to express concerns over human rights issues, for example.
- The unequal nature of access to the treaty's dispute body, the High Council, by non-ASEAN members.
--Four understandings reached and set out by the Foreign

Minister in his letter of 13 July 2005 (note: US State Department already has a copy)

- Accession to the TAC will not affect Australia's obligations under other bilateral or multilateral agreements.
- TAC is to be interpreted in conformity with the UN Charter, and accession to TAC will not affect Australia's rights and obligations under the UN Charter.
- TAC will not apply to, nor affect, Australia's relationship with States outside Southeast Asia.
- When a Contracting State outside Southeast Asia is directly involved in a dispute, the agreement of that Contracting State is required before the High Council can be convened, and
- Should the High Council be convened, that Contracting State would be entitled to participate in the High Council.

Post-accession issues of interpretation or application of the TAC--NIL

3.(SBU) Three Internet resources to the documents described in para 2 above follow: Please note that a space has been added to each in order to have them comply with Cable Express.

The Joint Standing Committee on Treaties (JSCOT) report 68 chapter 3 has the following paragraph that notes the preference of ASEAN for non-public statements of understanding: " 3.16 At the request of ASEAN states, the exchange of correspondence states that the understandings are provided on a 'non-prejudice basis to ASEAN.' This phrase does not qualify the understandings but rather reflects the fact that it is not usual ASEAN practice to record understandings of the Treaty in a public document."
<http://portsea.austlii.edu.au/au/other/jscot/reports/68/chapter3.html>

<http://www.austlii.edu.au/au/other/dfat/treaties/2005/30.html>
This site has the text of the actual treaty.

<http://www.austlii.edu.au/au/other/dfat/nia/2005/14.html>
This site has the texts of subsequent amendments and protocols.

14. (SBU) Ridwaan Jadwat, director of ASEAN regional issues at DFAT elaborated on some challenges faced by the Australians during the process and relayed comments from Lynette Wood, the DFAT officer in charge of the procedures for Australia's accession to TAC in 2005.

a. (SBU) It is very important to have a very active country from ASEAN as coordinator of the process. Australia's coordinating country was Vietnam.

b. (C/NF) Australia proposed six options to lodge its four understandings with ASEAN:
-- Option 1. Formal reservation lodged with ASEAN
-- Option 2. Formal declaration of understandings to ASEAN
-- Option 3. Interpretive statement of understandings to ASEAN
-- Option 4. Exchange of correspondence setting out understandings to ASEAN (a method actually used by South Korea).
-- Option 5. Private understandings to ASEAN (used by Japan)
-- Option 6. No formal or informal declaration of understandings

c. (SBU) Option 1 was not acceptable to ASEAN. Options 5 and 6 were preferred by ASEAN, which worried that a public declaration might undermine TAC (see note to JSCOT report para 3). Options 5/6 were not acceptable to Australia, which wanted the transparency of a public declaration. Options 2/3 were less preferable to Australia as they were not formally binding on the other parties. Option 4 was ultimately preferred by Australia, because it afforded formal acknowledgement by key state parties of Australia's interpretation of the relevant parts of the TAC. It was not preferred by ASEAN, which was already concerned that this method chosen by South Korea would be given a further precedent. The Koreans seemed to have reached this method by

chance rather than by choice. ASEAN eventually agreed to Option 4, although reluctantly.

d. (C/NF) Australia sought a guarantee of membership in the EAS in exchange for acceding to the TAC. Then Foreign Minister, Alexander Downer, received private assurances from ASEAN in this regard, but he waited for the public announcement of Australia's membership in EAS before he announced Australia's accession to the TAC.

15. (C) Comment: Jadwat, who had just returned from Bangkok where he had met with EAS member country representatives, commented that ASEAN members had spoken very positively about Secretary Clinton's statements on her recent Asian visit regarding the U.S. intent to accede to the TAC and her commitment to participate more fully in ASEAN. ASEAN members were curious whether the U.S. decision to pursue accession to the TAC meant it was also interested in EAS membership, he Qthe TAC meant it was also interested in EAS membership, he added. He did not hear any opposition from ASEAN members to the U.S. plan to accede to the TAC. He recalled, however, that a Malaysian representative had bridled at the notion of the U.S. seeking to enter the EAS, replying along the lines that the U.S. would have to wait for an invitation from ASEAN first.

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